IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL WRIT PETITION NO.2845 OF 2005

Shri Vinod Ramjiyawan Rajbhar]
Age : 25 yrs., Hut No.515,]
Dinabandhu Nagar, Wadala]
(East), Mumbai 400 037]
(The detenu is detained at] Petitioner.
Nasik Road Central Prison,] (Detenu)
Nasik]

versus

1. Shri A.N.Roy]
Commissioner of Police]
Brihan Mumbai]
2. The State of Maharashtra]
3. The Superintendent]
Nasik Road Central Prison]
Nasik] Respondents.

Mr.U.N.Tripathi for the petitioner.
Mr.D.S.Mhaispurkar, APP, for the respondents.

CORAM : D.G.DESHPANDE

S.A.BOBDE, JJ.

DATED : JULY 28, 2006.

JUDGMENT [PER D.G.DESHPANDE,J]

1. Heard Mr.Tripathi, the learned counsel appearing for the detenu and Mr.Mhaispurkar, the learned APP appearing for the State/respondents.

2. Petitioner is the detenu himself. He was detained under the Maharashtra Preventive of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 (hereinafter called as "MPDA Act"] by an order dated 1st September 2005.

3. In this petition, number of grounds have been raised by the petitioner challenging the detention order, but learned counsel Mr.Tripathi restricted himself to one ground only i.e. Ground No. 7 (B). That ground is in respect of C.R.No.75/2005 registered at Wadala Police Station on 14.7.2005. According to Mr.Tripathi, even if the incident covered by this C.R. is

taken into consideration as it is from the grounds of detention, it does not show that public order was disturbed thereby.

4. The incident is given in the grounds of detention in para 5(a)(i). According to it, on 13.07.2005. at about 11.00 hrs. one Yogesh Vichare was supervising the work of civil construction. At that time, the detenu and his one associate Saleem Ismail Deshmukh went there and demanded Rs.5000/- from Yogesh Vichare. Threats were given that either the amount should be given or work should be stopped and, then both the detenu and his associate left the place. Again on the same day at 13.30 hrs. Mangesh Vichare - the brother of Yogesh Vichare was at the site where the detenu along with his associate went there. They shouted and abused. Again a demand of Rs.5000/- was made in presence of the workers at the site. Some fist blows were also given to Mangesh and it was followed by threats. This incident is made basis of C.R.

5. Mr.Tripathi, the learned counsel appearing for the detenu, contended that when the detenu was arrested, immediately on the next day

he got bail and, in this background, he contended that neither the detenu nor his associate had carried any weapon. Therefore, giving simple threats without any use of force or muscle power or terror could not have affected the public order at all. At the most, it could be the law and order problem.

6. Our attention was drawn by the learned counsel Mr.Tripathi to a judgment of the Supreme Court reported in **1992 II SVLR (CR) 1 [Lallan Prasad Chunnilal Yadav v/s. Shri S.Ramamurthi & ors.]**. It was also a case of public order. The activities of the detenu in that case where the appellant threatened the individuals by speaking words or giving them fists and kicks blows and, therefore, the Supreme Court held that "they could not in any event be summed up as activities prejudicial to maintenance of "public order". Rather these are activities patently prejudicial to maintenance of "law and order".

7. As against this, learned APP Mr.Mhaispurkar tried to contend that this is not a case of law and order but it is a case of public order. But he could not substantiate his

submission either from the grounds of detention i.e. from the particulars of C.R. given and referred to us as above and on the basis of any authority.

8. Needless to say that there is vast difference between public order and law and order and, since this case does not fall in the category of public order, then detention order, following the aforesaid judgment of the Supreme Court, is required to be set aside. Hence we pass the following order :-

ORDER

Petition is allowed.

Rule is made absolute.

[D.G.DESHPANDE,J]

[S.A.BOBDE, J]